

APPLICANTS:
Sydney and Kelly Peverley
T-Mobile Northeast LLC

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS

REQUEST: A special exception to locate
a communications tower in the Agricultural
District

HEARING DATE: December 12, 2007

Case No. 5600

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Sydney D. Peverley, III and Kelly C. Peverley

CO-APPLICANT: T-Mobile Northeast LLC

LOCATION: 704 Schucks Road, Bel Air
Tax Map: 50 / Grid: 1A / Parcel: 279
Third (3rd) Election District

ZONING: AG / Agricultural

REQUEST: A special exception, pursuant to Sections 267-53.4C, and 267-53.6 of the Harford County Code, to allow a communications tower in the AG/Agricultural District.

TESTIMONY AND EVIDENCE OF RECORD:

The property which is the subject of this application is a 73.3 acre, agriculturally zoned parcel located on Schucks Road, south of MD Route 22. The property is improved by two dwellings and agricultural structures, including barns and greenhouses. The property is actively farmed.

T-Mobile Northeast LLC proposes the construction of a 120 foot high cell tower within a structure built to resemble a farm silo. The location of the cell tower will be very close to the physical center of this 73.3 acre tract, and adjacent to an existing barn.

For the Applicant first testified Robin Kohn, a registered architect who has been employed in the design of cell tower sites for almost 20 years. Mr. Kohn described the location of the cell tower as being approximately 925 feet from the southwest property line; 690 feet from the southeast property line; and 846 feet from the easterly property line. The cell tower will be at least 700 feet from the closest residential use.

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The silo structure in which the cell tower will be constructed will be a steel structure clad in fiberglass, 120 feet tall, 20 feet in diameter, and similar in appearance to other silos. The cell tower, and of course the steel and fiberglass silo in which it is to be constructed, will be located next to an existing barn.

The current use of the property is agricultural. The uses to the north and east are agricultural, and the uses to the west and southwest are residential.

Mr. Kohn explained that the cell tower will generate no noise, will have no lights, and will be of very low impact. Traffic to and from the cell site should be minimal. No employee will be stationed on-site, although they will occasionally visit for normal repair and maintenance. The silo will be white in color.

Mr. Kohn identified a series of photographs, marked as Exhibits 1 thru 13, of the proposed site. These photos were taken from various locations on and around the subject parcel, and are visual representations of how the 'silo' would look from each of those locations.

Next for the Applicant testified Rose West, a zoning analyst for T-Mobile Northeast LLC. Ms. West indicated that three telecommunication companies will co-locate on the proposed tower – T-Mobile, Verizon and one unidentified carrier. The structure and cell tower will comply with all applicable building codes and with FCC Guidelines. The cell tower itself will meet FCC Emission Standards.

According to Ms. West, other sites in the area have been reviewed for potential location of cell towers, including co-location. Ms. West's principal goal was to find existing structures on which T-Mobile could co-locate. Ms. West examined 4 other sites in the area, and identified those locations. None of these were found to be feasible for co-location.

The proposed location would best fill the gap in T-Mobile's coverage in the area of Schucks Road. The witness sees no negative impact on any adjoining property owner or neighbor. The elimination of dropped calls in the area should, in fact, be a benefit to the area. The witness envisions no environmental impact.

On cross-examination, Ms. West stated that T-Mobile callers in the area have experienced dropped calls. The proposed tower will help eliminate those problems. Furthermore, the proposed tower is needed in order to help achieve triangulation in the area proposed.

The setbacks from adjoining residential uses are between 700 and 800 feet. The 'silo' will help the cell tower installation be consistent with the agricultural character of the neighborhood. Still on cross-examination, Ms. West stated she had reviewed all other available sites within a 2 mile radius of the site and found nothing which compared to the proposed location.

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The height of the cell tower has been determined by radio frequency needs. Each site is different, and it has been found that 120 feet for the proposed cell tower is sufficient.

While the witness acknowledged the silo is perhaps not similar in height to the other silos in the area, the fact that it is set back relatively far from Schucks Road will help maintain, visually, its proportion with respect to other structures in the area.

The witness has examined real estate value studies which have shown that similar structures have no impact on value of adjoining residential property values.

Next testified Pavan Dandapanthula, a radio frequency engineer employed by T-Mobile Northeast LLC. The witness has been a radio frequency design engineer for approximately 4 years with T-Mobile. He designs cell sites throughout the United States. For 2 years he has been employed in the Virginia and Maryland districts.

The witness has been involved with the siting of approximately 500 cell sites. His specific duties include the technical design work for cell sites. While the particular cell site which is the subject of this application was designed by a colleague, he is familiar with its design and studies.

Mr. Dandapanthula testified that T-Mobile is prompted, in part, by customer complaints to construct new cell towers to fill in “gaps”. Numerous customer complaints have come from the area of the proposed cell tower, which is in fact the reason T-Mobile has elected to construct a new cell tower in this area. The height of 120 feet has been determined by T-Mobile engineers to be the height necessary in order for the system to “hand off” calls without disruption to customer service.

Mr. Dandapanthula identified Applicant’s Exhibits 32 and 33 as maps of the area showing the existing and proposed coverage of the T-Mobile system. The exhibit shows that, with the proposed cell tower in place, there will be few dropped calls. Mr. Dandapanthula also explained a relatively new type of coverage called “E911”, which is a system by which calls can be triangulated, thereby determining the location of the sender. The proposed cell tower is necessary in order to help fill a gap in the ability of T-Mobile to provide triangulization in the area. Mr. Dandapanthula explained, that based on T-Mobile records, a total of 312 “911” calls per month originate from the 6 surrounding T-Mobile sites. In his opinion, the proposed site is necessary to improve and maintain important “911” telephone call coverage.

T-Mobile, according to the witness, operates its facilities at well below FCC allowable emission standards. There has been no established health impact by RF (radio frequency) emissions, although there is a chance of cumulative impact. Such an impact has not yet been determined to exist.

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Next testified Anthony McClune of the Harford County Department of Planning and Zoning. Mr. McClune described the subject property as being approximately 73 acres in size improved by an agricultural operation, including landscaping business. The property lies outside of the development envelope. Mr. McClune noted that the landscape business must obtain a proper permit.

Accordingly to Mr. McClune and the Department of Planning and Zoning Staff Report, the Applicant meets or exceeds all applicable Code regulations. The cell tower will be approximately 750 feet from the closest residential use. Mr. McClune sees no adverse impact on the neighborhood or neighbors. A County radio frequency engineer has found a need for the tower at the proposed location. That Staff Report states, inter alia:

“The Department finds that the Applicants have or will be able to meet the requirements of Section 267-53.5G. In addition to the other requirements, Section 267-53.5G requires that when the communications tower is allowed by Special Exception, the County’s radio frequency engineer shall determine whether the Applicant has shown a radio frequency need, based on coverage and/or capacity issues, or other engineering requisites, to construct a new communications tower. In addition, the County’s radio frequency engineer shall ensure that any new tower does not interfere with or obstruct existing or proposed communications towers designed for public safety use.

Information pertaining to the above requirements was submitted and subsequently reviewed by the County’s radio frequency engineer. The County’s radio frequency engineer has determined that the request for this tower fills a gap in the co-applicant’s coverage and appears to be a logical placement for the tower. In addition, the tower’s location does not interfere with the current microwave paths for the Public Safety radio system.”

Next testified Kelly Peverley, an owner of the subject property. Mrs. Peverley stated that there was an existing silo at the exact spot upon which the proposed ‘silo’ structure will be erected which will house the cell tower. The old silo had been demolished. The property owners had requested of T-Mobile that the cell tower antenna be enclosed in a silo so as to be more in conformity with the existing agricultural area. While the old silo was not 120 feet high, Mrs. Peverley believes that the proposed ‘silo’ structure will be more in keeping with the agricultural area.

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Next in opposition testified Gary Labanowski, who resides at 860 Schucks Road, northeast of the site and adjacent to the subject property. Mr. Labanowski finds the subject property to be a beautiful piece of property. He is very much attracted to the area and enjoys the surroundings. He is worried that his property value will decrease if the cell tower is approved and constructed as proposed. He believes that the silo will be very obtrusive. It appears to be a large “tube”, and not similar to other farm silos. He believes it will be out of place. He believes that cell tower emissions can be harmful to health, although he has no authority for such an opinion. He believes that other carriers provide coverage in the Schucks Road area, and he has no problem completing cell calls on his phone or contacting 911. He accordingly does not see a need for a cell tower at this location.

Next in opposition testified Laura Geiman, who resides at 880 Schucks Road and next door to Mr. Labanowski. Ms. Geiman is opposed to the proposal. She believes it will have an adverse impact on her property values. She will find it more difficult to sell her house. She, also, has no problem completing cell calls on her cell phone, and does not see the need for a new structure at the proposed location.

No other evidence or testimony was presented in opposition.

APPLICABLE LAW:

The Applicant is requesting a special exception to Section 267-53.4C of the Harford County Code which states:

“C. Communications tower shall be allowed by special exception up to 199-feet, in the R, RR, R1, R2, VR, VB, B1, B2, and AG District.”

The Applicant also requests a special exception to § 267-53.6 of the Harford County Code which states:

“An Applicant proposing a new communications tower in the R, RR, R1, R2, VR, VB, B1, B2, or AG Districts shall demonstrate that the request complies with the following conditions:

- A. The placement of the communications tower at the proposed location will not have a material negative impact on the value, use or enjoyment of any adjoining parcel.*
- B. The Applicant has made a diligent attempt to locate the Applicant’s antenna on an existing tower or nonresidential building or structure.*

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C. *The Applicant shall provide the following additional information in support of its application:*

- (1) *Photographs of existing site conditions;*
- (2) *Photographs demonstrating that a balloon test has been conducted, or other evidence depicting the visual impact of the proposed tower within a one mile radius of the tower; and*
- (3) *A map describing the topography of the site and the area within a one mile radius of the proposed tower.”*

Section 267-51 of the Harford County Code defines Purpose as:

“Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of Part 1.”

Section 267-52 of the Harford County Code defines General regulations as:

- “A. Special exceptions require the approval of the Board in accordance with Section 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.*
- B. A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.*
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.*
- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.*

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- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.”*

Section 267-53.1 of the Harford County Code, Telecommunications Facilities, is also applicable to this request and will be discussed in detail below.

Section 267-9I of the Harford County Code, Limitations, Guides and Standards, is also applicable to this request and will be addressed below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The proposed communications tower, to be located within a 120 foot high silo-type structure, is allowed by the Harford County Development Regulations as a special exception provided certain specific and general requirements are met. It is found, as will be discussed in more detail below, that all special and general conditions are met. It is further found that the use will have no adverse impacts above and beyond that which would normally be expected from such a use regardless of the district in which it is located. Special exceptions have been legislatively predetermined to be conditionally compatible with uses permitted in a particular zone, provided statutory standards are met. See Creswell v. Baltimore Aviation Services, Inc., 257 Md. 712 (1970). Once these standards have been met, not only should the special exception be granted, it must be granted.

The specific requirements of this particular special exception begin with a review of Section 267-53.4C as follows:

- C. Communications tower shall be allowed by special exception up to 199-feet, in the R, RR, R1, R2, VR, VB, B1, B2, and AG District.*

The tower is less than 199 feet and is to be located in the AG District.

Section 267-53.6 must then be examined to determine compliance, as follows:

An Applicant proposing a new communications tower in the R, RR, R1, R2, VR, VB, B1, B2, or AG Districts shall demonstrate that the request complies with the following conditions:

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- A. *The placement of the communications tower at the proposed location will not have a material negative impact on the value, use or enjoyment of any adjoining parcel.*

There is no evidence to suggest an adverse impact and, in fact, the Department of Planning and Zoning suggests that there will not be such an impact. The fact that the tower is 120 feet, substantially lower than the maximum allowed, and is within a structure which appears to be an agricultural type building, will mitigate any potential impact. Renderings of the structure as shown from the borders of the property amply demonstrate that the visual intrusion of the structure will be minimal. While the objections of the neighbors are noted, no evidence was submitted or can be found of any real or apparent impact on the use, value or enjoyment of their property.

- B. *The Applicant has made a diligent attempt to locate the Applicant's antenna on an existing tower or nonresidential building or structure.*

Evidence has been presented by T-Mobile representatives of their efforts to secure alternate locations. No such location was found.

- C. *The Applicant shall provide the following additional information in support of its application:*
- (1) Photographs of existing site conditions;*
 - (2) Photographs demonstrating that a balloon test has been conducted, or other evidence depicting the visual impact of the proposed tower within a one mile radius of the tower; and*
 - (3) A map describing the topography of the site and the area within a one mile radius of the proposed tower."*

All required information has been provided.

Furthermore, the more general requirements of Article VIII A, Telecommunications Facilities of the Harford County Development Regulations, Section 267-53.1 et seq. are also applicable.

It is found that the tower, as proposed, generally meets the purposes and provisions of said section. It is further found that, as described and planned, the tower can meet conditions which will be applied to the tower after its completion and during its operation. Furthermore, Section 267-53.6 impose additional special exception requirements as follows:

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- A. *The placement of the communications tower at the proposed location will not have a material negative impact on the value, use or enjoyment of any adjoining parcel.*

For reasons noted above, it is found that there will be no negative impact on the value, use or enjoyment of any adjoining parcel.

- B. *The applicant has made a diligent attempt to locate the applicant's antenna on an existing tower or nonresidential building or structure.*

Testimony by Applicants' witness was that efforts were made to locate appropriate and acceptable structures within the general area in which the Applicant is required to locate a tower in order to fill its coverage 'gap'. Certain structures were identified and found to be inappropriate for Applicants' use. Accordingly, the Applicant has shown that it has engaged in a diligent effort to locate its antennae on existing towers or structures.

- C. *The applicant shall provide the following additional information in support of its application:*

- (1) Photographs of existing site conditions;*
- (2) Photographs demonstrating that a balloon test has been conducted, or other evidence depicting the visual impact of the proposed tower within a one mile radius of the tower; and*
- (3) A map describing the topography of the site and the area within a one-mile radius of the proposed tower.*

The Applicants have complied with this condition. Adequate photographs have been provided showing a digitally created view of the silo, and the required maps and plats have been introduced which show the area of the proposed tower, and surrounding area, in great detail.

Accordingly, it is found that the pertinent conditions of Section 267-53.1 have been met. A condition of approval is that the Applicants continue to comply with the additional conditions of that section once the tower is operational.

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The special exception must also be reviewed in light of the Limitations, Guides and Standards, Section 267-9I, of the Code. These factors are set forth and addressed as follows:

- (1) *The number of persons living or working in the immediate area.*

This is an area of mixed agricultural, residential, institutional and commercial uses, as pointed out by the Staff Report. However, the proposed tower will be located within a ‘silo’ within the approximate middle of the 73 acre subject property, and being located a minimum of 700 feet from any residence. It cannot be found that the special exception will impact the number of persons living or working in the immediate area.

- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

The proposed tower will have no impact on traffic in the area. The traffic to the tower will be minimal.

- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the County.*

To the extent there is a fiscal impact on the County from the proposed use, the impact will be positive. The construction of a ‘gapless’ communications system is in the best interest of the neighborhood and the community. Accordingly, there will be no negative impact on the orderly growth of the neighborhood and community.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

No such characteristics should be created by the use.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.*

Water and sewer available is not necessary. State and local police will provide security.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

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As noted above, special exceptions have been legislatively predetermined to be compatible with the principle permitted uses, once all general and specific conditions are met. Accordingly, the use is consistent with generally accepted engineering and planning principles.

- (7) *The structures in the vicinity, such as schools, houses or worship, theaters, hospitals, and similar places of public use.*

No such structures have been identified.

- (8) *The purposes set forth in this Part I, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The tower is consistent with the Harford County Master Land Use Plan.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

No such natural features have been identified. The tower will not impact recreation or open space.

- (10) *The preservation of cultural and historic landmarks.*

No such landmarks have been identified.

Furthermore, the application must be reviewed in light of the standards of Schultz v. Pritts, 291 Md. 1, 432 A2d 1319 (1981), which provides that the use cannot be allowed if it has a greater impact at the proposed location than it would have anywhere else within its particular zone.

The Applicants have made a diligent effort to reduce the visual impact of the proposed use. The cell tower will be located within a 120 foot silo-type structure, which has been proposed at the request of the owners of the property. While, admittedly, a 120 foot silo is higher than most silos in Harford County, it is also as much as 700 feet from the closest property line.

Nevertheless, even if it were not located in such a structure, a cell tower as requested and at the proposed location would not have a greater impact than if it were located elsewhere within this agricultural zoning district. The cell tower is well off the nearest public road and far from adjoining property lines. The tower is smaller than is allowed by Code, and certainly presents no more of an impact here than in other areas of the County. In fact, its impact should be far less, for reasons noted above.

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Accordingly, the application must be approved.

CONCLUSION:

For the above reasons, it is recommended that the requested special exception be approved, subject to the following conditions:

1. A site plan shall be submitted to review and approval through the Development Advisory Committee (DAC).
2. The Applicants shall obtain all necessary permits and inspections for the proposed facility.
3. The Applicants shall construct the facility in general compliance with the Applicants' site plan.
4. The Applicants comply with all general and specific requirements of the Harford County Development Regulations, particularly including those conditions of the Telecommunications Facilities Article, VIII A, Section 267-53.1 et seq.
5. The record plat for the 73.3 " acres shall be recorded in the Harford County Land Records prior to building permit application for the proposed silo.
6. The property owner shall obtain special exception approval for the landscaping business and commercial vehicle and equipment storage prior to building permit application for the proposed silo; or the business shall cease operation.

Date: January 14, 2008

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on FEBRUARY 12, 2008.